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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**IN RE: MIDLAND CREDIT  
MANAGEMENT, INC.,  
TELEPHONE CONSUMER  
PROTECTION ACT LITIGATION**

Case No. 11-md-2286-MMA (MDD)  
Member cases: 10-cv-02261  
10-cv-02600  
10-cv-02368  
10-cv-02370

**CLASS ACTION  
PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
CERTIFICATION OF  
SETTLEMENT CLASS**

Date: August 26, 2016  
Time: 9:00 a.m.  
Courtroom: 3A  
Judge Michael M. Anello

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1           **I. INTRODUCTION**

2           Plaintiffs Christopher Robinson, (“Robinson”), Eduardo Tovar (“Tovar”), and  
3 Dave Scardina (“Scardina”) (collectively “Plaintiffs”), submit this motion for final  
4 approval of a proposed settlement (the “Settlement”) of this action (the  
5 “Litigation”), which is unopposed by defendants Midland Funding, LLC (“Midland  
6 Funding”), Midland Credit Management, Inc. (“MCM”), and Encore Capital  
7 Group, Inc. (“Encore”) (collectively referred to as “Defendants”).<sup>1</sup> As shown by the  
8 response of the Class members, this Settlement received an overwhelming  
9 response, with almost 330,000 claims being filed. Out of more than 6,000,000  
10 postcard notices received by the Class members, and further notice to other Class  
11 members by publication and internet banner ads, only 446 persons excluded  
12 themselves from the settlement (including 11 untimely opt-outs) and only between  
13 15 and 32 objected. These numbers confirm that the Settlement is fair and  
14 reasonable and should be given final approval.

15           The terms<sup>2</sup> of the Settlement are set forth in the Settlement Agreement and  
16 Release (hereinafter the “Agreement”) attached as Exhibit A to the Declaration of  
17 Douglas J. Champion In Support of Preliminary Approval (ECF No. 281-2). As  
18 discussed in Plaintiffs’ Motion for Preliminary Approval, the Parties’ Settlement  
19 Agreement resolves all Telephone Consumer Protection Act (“TCPA”) claims in  
20 this matter against Defendants arising from collection calls made between  
21 November 2, 2006 and August 31, 2014, inclusive. *See* Order Granting Plaintiffs’  
22 Motion for Preliminary Approval of Class Action Settlement; Setting Final  
23 Approval Hearing, (“Preliminary Approval Order”), ECF No. 291.

24           As set forth in the Preliminary Approval papers, the Settlement provides the  
25 following benefit to the Class to be paid by Defendants:

26  
27 <sup>1</sup> Plaintiffs and Defendants are referred to collectively as “the Parties”.

28 <sup>2</sup> Unless otherwise specified, defined terms used in this memorandum are intended to have the meaning ascribed to those terms in the Agreement.

- 1 1. \$13,000,000 Credit Component, with pro rata credits to be credited to the
- 2 Approved Claimants' accounts held by Defendants.
- 3 2. \$2,000,000 Cash Component, with pro rata cash payments to be paid to
- 4 the Approved Claimants that do not have existing accounts with
- 5 Defendants.
- 6 3. All costs of Notice and Claims Administration presently estimated to be
- 7 between \$3,098,608 and \$3,352,407. (The actual amount incurred will be
- 8 submitted to the Court in a declaration by KCC prior to the Final
- 9 Approval hearing. )
- 10 4. Attorneys' fees and costs of litigation to be paid to Plaintiffs' counsel,
- 11 subject to Court approval, in the amount of \$2,400,000.

12 Thus, the Settlement has a value of at least \$20,498,608.00.

13 The reaction of the Class and the result obtained establishes that this settlement  
14 clearly deserves final approval. Each approved Credit Group claimant will receive  
15 an approximate credit on their open collection accounts with Defendants in the  
16 amount of \$58.84. Each approved Cash Group claimant will receive a cash payment  
17 in the approximate amount of \$23.49. These amounts are based on the approved  
18 claims filed during the lengthy 90 day claims period, and after giving the proposed  
19 credit claimants the right to contest the characterization of their claim as a credit  
20 claim. *See Declaration of Douglas J. Campion In Support of Final Approval*  
21 *("Campion Decl.")* ¶¶ 21-23. This is an excellent result for the Class.

22 Furthermore, several types of notice have been given to apprise the Class  
23 members of their rights to either submit a claim, exclude themselves or object to the  
24 settlement. These notices resulted in 328,749 timely claims being submitted (and  
25 1,006 untimely claims). The 6,266,704 persons for whom Defendants had names  
26 and addresses were mailed a postcard with the class notice. Including notices that  
27 KCC re-sent after being returned by the Post Office, approximately 6,034,167  
28 postcard notices were received by the Class members identified in Defendant's

1 records. The approximately 35,279,415 Class members, for whom Defendants did  
2 not have names or address, were provided notice through publication and internet  
3 banner advertising as set forth in the Court’s Preliminary Approval Order. KCC  
4 estimates the notice reached approximately 75.3% of likely Class members, and  
5 average of 1.8 times each. See Declaration of Daniel Burke Re Implementation of  
6 Settlement Notice Plan (“Burke Decl.”) ¶¶ 7-10, filed herewith. (Mr. Burke works  
7 for the claims administrator Kurtzman Carson Consultants (“KCC”)); Declaration  
8 of Douglas J. Campion In Support of Final Approval (“Campion Decl.”) ¶ 16.

9 The dates for filing claims, for opting out and for objecting passed several  
10 months ago. There have been only 446 requests for exclusion (including 11  
11 untimely claims), a tiny percentage of even the group of persons receiving postcard  
12 notice. Campion Decl. ¶ 24. In addition, there have been only between 15 and 30  
13 “objections” filed, with many not designated as “objections” but instead seem to be  
14 stating complaints not just about the settlement but about Defendants’ collection  
15 practices. A hearing is scheduled for August 17, 2016 before the Special Master to  
16 decide the merits of those objections. *Id.* at ¶ 25. Counsel will advise the Court at  
17 the Final Approval hearing as to the Special Master’s disposition of the objections.  
18 The number of objections is also miniscule relative to the number of persons in the  
19 Class. These factors also support final approval.

20 Plaintiffs brought this action on behalf of themselves and all others similarly  
21 situated that received one or more telephone calls on their cellular telephones that  
22 were placed by Defendants through the use of an automatic telephone dialing  
23 system (“ATDS”) and/or prerecorded voice without the called party’s consent. The  
24 settlement was followed by confirmatory discovery to confirm the processes used  
25 by Defendants in ascertaining the cell phone numbers called and the Class  
26 membership was adequate. Based on everything before the Court and all facts  
27 known to counsel, including the participation by the Class members, Plaintiffs  
28 believe that the settlement is fair, reasonable and adequate and should be approved.

1           **II.       PROCEDURAL BACKGROUND**

2           The history of the case is set forth in the Plaintiffs' Memorandum of Points  
3 and Authorities in Support of Unopposed Motion for Preliminary Approval of Class  
4 Action Settlement and Certification of Settlement Class ("Prelim. App."), ECF No.  
5 281-1. In short, while engaged in litigation, the parties mediated a settlement over a  
6 several year period before the Hon. Herbert B. Hoffman, Ret.

7           **III.       ACTIVITY IN THE CASE AFTER GRANT OF PRELIMINARY**  
8           **APPROVAL**

9           **A. PRELIMINARY APPROVAL AND CONDITIONAL CERTIFICATION**

10          On December 9, 2015, (ECF No. 291) this Court preliminarily determined that  
11 the settlement was fair, reasonable, and adequate. *Id.* at page 2.<sup>3</sup> This Court  
12 preliminarily approved the Parties' settlement agreement in which the following  
13 settlement class was provisionally certified:

14           All persons in the United States who were called on a cellular  
15 telephone by Defendants or their subsidiaries, affiliates or  
16 related companies (other than calls made by Asset Acceptance  
17 LLC, Atlantic Credit & Finance, Inc. or Propel Financial  
18 Services) using a dialer or by prerecorded voice message  
without prior express consent during the period from November  
2, 2006 through August 31, 2014, inclusive.

19           Excluded from the Class are the Judges to whom the Action is  
20 assigned and any member of the Judges' staffs and immediate  
21 families, as well as all persons who validly request exclusion  
from the Settlement Class.

22 Preliminary Approval Order at 3.

23          Following Preliminary Approval, KCC, the claims administrator, has  
24 administered the settlement in accordance with the Court's Preliminary Approval  
25 Order and the Settlement Agreement. Burke Decl. ¶¶ 6-19.

26 \_\_\_\_\_  
27 <sup>3</sup> In compliance with this Court's Preliminary Approval Order, Plaintiffs filed their  
28 Motion for Attorneys' Fees and Approval of Costs, and for Incentive Payments  
(ECF No. 318) on March 23, 2016. That motion is to be heard at the same time as  
the present motion.



1                   **B. CLASS NOTICE DISSEMINATION**

2                   “Adequate notice is critical to court approval of a class [action] settlement.”  
3                   *Hanlon v Chrysler Corp.*, 150 F.3d 1011, 1025 (9<sup>th</sup> Cir. 1998); Fed. R. Civ. P.  
4                   23(e)(1). KCC administered the notice process following the Preliminary Approval  
5                   Order. Preliminary Approval Order, pp. 3-5. Burke Decl. ¶ 6. In accordance with  
6                   the Settlement Agreement and the Preliminary Approval Order, KCC provided  
7                   direct mail notice, publication notice, a settlement website, Internet banner  
8                   advertisements, and publication of Web Notice. *Id.* at ¶¶ 7-15. The postcard notices  
9                   were mailed out originally to 6,266,704 Class members for whom Defendants had  
10                  names and addresses. *Id.* at ¶ 10. After returns and remails, there were 6,034,167  
11                  persons who received the notice postcards (*Id.*), or about 96% of the Class members  
12                  whose names and addresses are contained in Defendants’ records. The remaining  
13                  Class members (approximately 35,169,211) for whom Defendants did not have  
14                  names and addresses received notice as directed in the Preliminary Approval Order,  
15                  by publication, internet banner ads and the notice posted on the settlement website,  
16                  allowing anyone searching for the settlement on the internet to easily find the  
17                  settlement website and notice. *Id.* at ¶¶ 12-14.

18                  The various forms of Class Notice provided detailed information regarding (a)  
19                  class members’ rights, including the manner in which objections and exclusions  
20                  could be lodged; (b) the case’s nature, history and progress; (c) the proposed  
21                  settlement and reason for the settlement; (d) the settlement’s benefits; (e) Class  
22                  Counsel’s requested fees and costs; (f) the Fairness Hearing’s date, time and  
23                  location; and, (g) Class Counsel’s contact information. *Campion Decl.*, ¶ 17.

24                  The preliminary estimate of the cost of notice and claims administration as  
25                  provided at Preliminary Approval was between \$3,098,608 and \$3,352,407,  
26                  depending on the claims rate. However, that cost, regardless of amount, will be paid  
27                  by Defendants directly to KCC separate from the Settlement Fund. Settlement  
28                  Agreement, Sections 8.06-8.07. The revised and updated estimate of the cost of

1 notice and claims administration will be provided at the time of the Final Approval  
2 Hearing by KCC.

### 3 **C. CLAIMS PROCESS**

4 The Class members were given 90 days to submit claims to the Claims  
5 Administrator. Submitting a claim was simple – a claimant could submit them  
6 online, by calling a toll-free 800 number or by downloading a claim form and  
7 mailing it in. If the person received a postcard, each postcard had a claim  
8 identification number, expediting the submission. If the person did not have a  
9 postcard, they could submit any cellphone number on which they believed they may  
10 have been called, and if that number matched any cellphone number on the Class  
11 List of numbers called, they could submit a claim. As a result of this simple claims  
12 procedure, a substantial number of claims – 329,755 – were submitted, including  
13 1,006 late claims. Burke Decl., ¶ 20.

### 14 **D. RESPONSE TO CLASS NOTICE**

15 Class members contacted KCC and Class Counsel to discuss the Class  
16 Notice, their options and the case status. Out of all the class members that received  
17 notice, only between 15 and 32 persons objected to or complained about the  
18 settlement and 446 requested exclusion, including 11 late opt-outs. Burke Decl. ¶  
19 21. As of the date of this filing, the claims administrator is still waiting to see if  
20 additional claims will be filed in response to KCC’s deficiency letters, letters  
21 asking claimants who submitted claims with missing information to correct their  
22 claims. Once that process is completed prior to the Final Approval hearing,  
23 Plaintiffs will have a more exact number of approved claimants in both groups to  
24 provide the Court, as well as a more exact dollar amount of credits and cash  
25 payments to be provided to claimants in each group.

### 26 **E. CAFA NOTICE**

27 Pursuant to the Class Action Fairness Act 28 U.S.C. §1715(b) (“CAFA  
28 Notice”), notice of the Settlement was sent by Defendants to the Attorney General

1 of the United States and to the requisite state Attorneys General by sending them  
2 the documents specified by 28 U.S.C. §1715(b)(1)-(8). See ECF No.306.

#### 3 **IV. LEGAL ARGUMENT**

4 “In evaluating a class action settlement under Rule 23(e), the district court  
5 determines whether the settlement is fundamentally fair, reasonable, and adequate.”  
6 *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9<sup>th</sup> Cir. 2008) (citing Fed. R. Civ.  
7 P. 23(e). The purpose of this Rule “is to protect the unnamed members of the class  
8 from unjust or unfair settlements affecting their rights.” *Id.* In evaluating a class  
9 action settlement, “a district court has both the duty and the broad authority to  
10 exercise control over a class action and to enter appropriate orders governing the  
11 conduct of counsel and parties.” *Hanlon*, 150 F.3d at 1025 (9<sup>th</sup> Cir. 1998) (quoting  
12 *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981)). Nevertheless, the District Court  
13 does not have the “ability to delete, modify, or substitute certain provisions.” *Id.* at  
14 1026. “The settlement must stand or fall in its entirety.” *Id.*

##### 15 **A. THE CLASS ACTION SETTLEMENT APPROVAL PROCESS**

16 Federal courts strongly favor and encourage settlements, particularly in class  
17 actions and other complex matters where the inherent costs, delays and risks of  
18 continued litigation might otherwise overwhelm any potential benefit the class  
19 could hope to obtain. *See Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (9<sup>th</sup>  
20 Cir. 1992) (noting that “strong judicial policy . . . favors settlements, particularly  
21 where complex class action litigation is concerned”); 4 Alba Conte & Herbert B.  
22 Newberg, *Newberg on Class Actions* § 11.41 (4<sup>th</sup> Ed. 2002) (gathering cases). The  
23 traditional means for handling claims like those at issue here – individual litigation  
24 – would require a massive expenditure of public and private resources and, given  
25 the relatively small value of each putative class member’s claim, would be  
26 impractical. Thus, the proposed Settlement is the best vehicle for Class members to  
27 receive the relief to which they are entitled in a prompt and efficient manner.

##### 28 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.**

1 Before granting final approval of a class action settlement, a reviewing court  
2 must first find the settlement “is fair, reasonable, and adequate.” Fed. R. Civ. P.  
3 23(e)(1). In evaluating whether a class settlement is “fair, adequate and  
4 reasonable,” courts generally refer to eight criteria, with differing degrees of  
5 emphasis: (1) the likelihood of success by Plaintiffs; (2) the amount of discovery or  
6 evidence; (3) the settlement terms and conditions; (4) recommendation and  
7 experience of counsel; (5) future expense and likely duration of litigation; (6)  
8 recommendation of neutral parties, if any; (7) number of objectors and nature of  
9 objections; and, (8) the presence of good faith and the absence of collusion. *See* 2  
10 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“Newberg”) §  
11 11.43 “General Criteria for Settlement Approval” (3d ed. 1992). *Officers for Justice*  
12 *v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982).

13 “A settlement following sufficient discovery and genuine arms-length  
14 negotiation is presumed fair.” *Knight v. Red Door Salons, Inc.*, 2009 WL 248367,  
15 at \*4 (N.D. Cal. 2009); *Garner v. State Farm Mut. Ins.*, 2010 WL 1687832, at \*13  
16 (N.D. Cal. 2010) (“Where a settlement is the product of arms-length negotiations  
17 conducted by capable and experienced counsel, the court begins its analysis with a  
18 presumption that the settlement is fair and reasonable.”). This is because “[t]he  
19 extent of the discovery conducted to date and the stage of the litigation are both  
20 indicators of counsel’s familiarity with the case and of Plaintiff having enough  
21 information to make informed decisions.” *Knight*, 2009 WL 248367, at \*4.

22 In the end, “[s]ettlement is the offspring of compromise; the question we  
23 address is not whether the final product could be prettier, smarter or snazzier, but  
24 whether it is fair, adequate and free from collusion.” *Hanlon v. Chrysler Corp.*, 150  
25 F.3d 1011, 1027 (9<sup>th</sup> Cir. 1998); *see also Pelletz v. Weyerhaeuser Co.*, 255 F.R.D.  
26 537, 544 (W.D. Wash 2009) (same). Here, the record before the Court demonstrates  
27 that the settlement agreement satisfies the Ninth Circuit’s standard and that final  
28

1 approval is warranted. Thus, the Parties request this Court grant final approval of  
2 the settlement.

3 **1. The Strength of Plaintiffs' Case and the Risks, Expenses, Complexity**  
4 **and Likely Duration of Further Litigation**

5 Plaintiffs' claims against Defendants have merit and would make a compelling  
6 case if Plaintiffs' claims were tried. If Plaintiffs were to prevail, Defendants could  
7 face substantial statutory penalties. Nevertheless, Plaintiffs and the Class would  
8 face a number of challenges if the litigation were to continue, justifying this  
9 compromise settlement.

10 ***a. Challenges to the claims on their merits***

11 In Plaintiffs' Preliminary Approval Motion, there were a number of potential  
12 issues outlined if the case proceeded on the merits. Memo. of Points & Authorities  
13 for Prelim. App., ECF No. 281-1, pp. 15-17. Those include various individual  
14 issues relating to prior express consent, the possibility of appeals, whether a  
15 telephone call was placed to a cellular telephone or landline. *Id.* Of course,  
16 Defendants deny any and all liability related to Plaintiffs' Complaint. While  
17 Plaintiffs believe that they could have overcome each of these issues, the risk to the  
18 class was substantial. Thus, Plaintiffs believe it is in the best interest of the Class to  
19 accept this substantial monetary benefit and seek final approval of this settlement.

20 ***b. The risk of maintaining class action status throughout trial***

21 The benefits of settlement and a plaintiff's chances of success are typically  
22 evaluated together. *See, e.g. Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482,  
23 488 (E.D. Cal. 2010) ("An important consideration in judging the reasonableness of  
24 a settlement is the strength of the plaintiff's case on the merits balanced against the  
25 amount offered in the settlement."). Through discovery and confirmatory discovery,  
26 Plaintiffs believe that they obtained sufficient information to establish that this  
27 Class satisfies the requirements of Fed. R. Civ. P. 23; however, Defendants have  
28 focused on the issues addressed above to argue that Plaintiffs and the Class

1 members face numerous risks in moving forward and that class treatment of this  
2 matter is inappropriate.

3 In addition, there is a substantial risk of losing inherent in any jury trial. Even  
4 if Plaintiffs prevailed at trial, Defendants would almost certainly appeal, threatening  
5 a reversal of any favorable outcome. *See Fulford v. Logitech, Inc.*, 2010 U.S. Dist.  
6 LEXIS 29042, at \*8 (N.D. Cal. 2010) (“[L]iability and damages issues – and the  
7 outcome of any appeals that would likely follow if the Class were successful at trial  
8 – present substantial risks and delays for Class Member recovery.”).

9 Under the Settlement Agreement, the Class Members may avoid each of the  
10 described risks and receive substantial cash benefits. “[T]his settlement...guarantees  
11 a recovery that is not only substantial, but also certain and immediate, eliminating  
12 the risk that class members would be left without any recovery...at all.” *Fulford*,  
13 2010 U.S. Dist. LEXIS 29042, at \*8. Thus, Plaintiffs contend that the substantial  
14 risk weighs in favor of granting final approval of this matter.

15 **2. The Amount Offered in Settlement and Amount to Be Paid or**  
16 **Credited Per Claimant**

17 The agreed-upon settlement was reached after extensive negotiation through  
18 literally years of mediation with Hon. Herbert B. Hoffman (Ret.). It reflected a  
19 compromise amount that experienced Class Counsel and their clients believed  
20 reflected a fair result in light of the burden, risk, and expense both sides faced  
21 through continued litigation in light of similar TCPA class action settlements that  
22 had received final court approval, which are discussed in more detail below.

23 The Settlement requires Defendants to establish two settlement funds, a  
24 \$13,000,000 fund to provide credits to claimants having open accounts with  
25 Defendants, and a \$2,000,000 fund to provide cash payments to those persons that  
26 have no open Midland accounts.<sup>4</sup> From those two funds, the claimants will receive

27  
28 <sup>4</sup> As explained in the motion for Preliminary Approval, p.6, the Cash Component is  
less than the Credit Component because the group to be covered by the Cash

1 either their pro rata share of the credits based on the number of credit claimants, or  
2 a pro rata share of the cash compensation. In addition, this is a non-reversionary  
3 fund meaning no amount of this fund will revert back to Defendants. Given the  
4 potential issues described above, this settlement represents an outstanding result for  
5 Class Members, particularly because the damages are purely statutory in that Class  
6 Members have not suffered any out-of-pocket losses or other economic harm.

7 This case has a much better claims rate than what is anticipated in these TCPA  
8 or other consumer cases. Based on the 6,034,167 postcard notices delivered (those  
9 Class members receiving actual direct notice), and based on 329,755 claims to date,  
10 that results in over a 5.4 % claims rate. Of course, based on the entire Class of over  
11 41,000,000 persons, the percentage is much smaller. *Campion Decl.* ¶ 21.

12 Recognizing that the final numbers of approved claims are not presently  
13 known at the time of filing this brief due to the pending deficiency claims, and late  
14 – filed claims for which Plaintiffs will seek permission to include in the payment of  
15 claims, Class Counsel estimate that each Class Member will receive a pro rata  
16 credit in the approximate amount of \$58.00, and the cash component group  
17 members will receive an approximate amount of \$23.00.<sup>5</sup> *Id.* Those numbers should  
18 not vary significantly, regardless of the changes in the number of approved claims  
19 or deductions from the Cash Component

### 20 **3. The Extent of Discovery Completed**

21 The Settlement was reached only after Class Counsel’s thorough investigation  
22 and analysis of the factual and legal issues involved. Class Counsel spent  
23 significant time thoroughly investigating the factual and legal claims involved in  
24 this Action, prior to filing this Action. *Campion Decl.* ¶ 9.. In addition, throughout  
25 the three years of mediation, Defendants also provided Plaintiffs with informal

Component was estimated in mediation by Defendants to be approximately 10% of  
26 the persons on the Notice List.

27 <sup>5</sup> The \$7,500 requested for incentive payments (\$2,500 each) will be paid from the  
28 Cash Component, as will any fees incurred for the services of the Special Master.  
Thus, the exact dollar amount paid to that group will not be known until all such  
fees are known and deducted. *Campion Decl.* ¶ 21.

1 discovery relating to the proposed Class and the number of calls made. Once the  
2 settlement was reached, Defendants responded to formal confirmatory discovery  
3 about the number of class members, including interrogatories, documents requests  
4 and the deposition of Defendants' Person Most Knowledgeable about the class  
5 membership and its determination, all to confirm that the settlement was fair,  
6 reasonable and adequate. *Id.* at ¶ 11.

#### 7 **4. The Experience and Views of Counsel**

8 Class Counsel are particularly experienced in litigating TCPA claims and have  
9 a keen understanding of the legal and factual issues involved in this case. *Campion*  
10 *Decl.*, ¶ 2, 27; Declaration of James O. Lattuner ("Lattuner Decl.") ¶¶ 2, 10.  
11 Based upon this experience, Class Counsel fully endorse this settlement as fair,  
12 adequate and reasonable which weighs heavily in favor of the Court approving the  
13 settlement. *Campion Decl.*, ¶ 7; Lattuner Decl. ¶¶ 5, 9. *See In re Omnivision*  
14 *Technologies, Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (quoting *Boyd v.*  
15 *Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) ("The recommendations of  
16 Plaintiff's counsel should be given a presumption of reasonableness."); *Linney v.*  
17 *Cellular Alaska P'ship*, 1997 U.S. Dist. LEXIS 24300, at \*16 (N.D. Cal. 1997)  
18 ("The involvement of experienced class action counsel and the fact that the  
19 settlement agreement was reached in arm's length negotiations, after relevant  
20 discovery had taken place create a presumption that the agreement is fair.").

#### 21 **5. The Reaction of Class Members**

22 "It is established that the absence of a large number of objections to a  
23 proposed class action settlement raises a strong presumption that the terms of the  
24 proposed class action settlement are favorable to the class members." *In re*  
25 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (quoting  
26 *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529  
27 (C.D. Cal. 2004) (3 objections out of 75,630 notices); *Churchill Vill., LLC v. Gen.*  
28 *Elec. Co.*, 361 F.3d 566, 577 (9th Cir. 2004) (approving the district court's finding



1 that this fairness factor weighed in favor of settlement when “only 45 of  
2 approximately 90,000 notified class members objected to the settlement”);  
3 *Rodriguez v. West Publ’g Corp.*, No. 05-3222, 2007 WL 2827379, at \*10 (C.D.  
4 Cal. Sept. 10, 2007) (54 objections out of 376,000 class members); *Sommers v.*  
5 *Abraham Lincoln Fed. Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978)  
6 (approving settlement where there were 8,000 opt outs out of 188,000).

7 The response by class members demonstrates widespread approval of the  
8 settlement. Out of 6,034,167 Class members who received postcard notices, and out  
9 of 35,279,415 who were provided notice by publication, internet banner notice and  
10 the settlement website, there have been only 446 opt-outs (including 11 late opt-  
11 outs) and only between 15 and 32 objectors. Campion Decl. ¶¶ 24-25. A total of  
12 329,755 class members submitted claims, including 1,006 late claims. *Id.* at ¶ 21.  
13 The small number of opt-outs and the very few objectors show that class members  
14 viewed the settlement as fair, reasonable, and adequate.

15 **6. The Presence of Good Faith, Absence of Collusion, and the Approval**  
16 **of a Third-Party Mediator Support Final Approval of the Settlement.**

17 In addition to considering the above factors, the Ninth Circuit has indicated  
18 that the Court should carefully review the settlement for any signs of collusion or  
19 conflicts of interest. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,  
20 946 (9<sup>th</sup> Cir. 2011). *Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at \*5  
21 (D.N.J. Sept. 14, 2009) (approving a settlement after a one-day mediation before a  
22 retired federal judge and noting that “the participation of an independent mediator  
23 in settlement negotiation virtually insures that the negotiations were conducted at  
24 arm’s length and without collusion between the parties (emphasis added)”);  
25 *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, 2010 WL 2486346, at \*6 (C.D. Cal.  
26 June 15, 2010) (approving settlement after a one-day mediation and noting that “the  
27 assistance of an experienced mediator in the settlement process confirms that the  
28 settlement is non-collusive (emphasis added)”); *Larson v. Sprint Nextel Corp.*, 2010

1 WL 239934, at \*11 (D.N.J. Jan. 15, 2010) (same); *Bert v. AK Steel Corp.*, 2008 WL  
2 4693747, at \*2 (S.D. Ohio Oct. 23, 2008); 2 McLaughlin on Class Actions § 6:7  
3 (8<sup>th</sup> ed) (“A settlement reached after a supervised mediation receives a presumption  
4 of reasonableness and the absence of collusion (emphasis added).”); and, *Dennis v.*  
5 *Kellogg Co.*, 2010 WL 4285011, at \*4 (S.D. Cal. Oct. 14, 2010) (the parties  
6 engaged in a “full-day mediation session,” thus establishing that the proposed  
7 settlement was noncollusive (emphasis added).”).

8 As detailed above, the Settlement is the result of adversarial arm’s-length  
9 negotiations between attorneys experienced in the litigation, certification, trial and  
10 settlement of nationwide class action cases. In addition, the Hon. Herbert B.  
11 Hoffman, Ret., facilitated the final settlement of this action with a lengthy almost  
12 three-year mediation. *Campion Decl.* ¶ 10. Accordingly, no signs of collusion or  
13 conflicts of interest are present here.

#### 14 **V. CONCLUSION**

15 This case resulted in a settlement of over \$20,000,000 in value, including  
16 \$13,000,000 in credits to Class Members accounts and \$2,000,000 in cash  
17 payments. It has the deterrent effect of preventing such conduct in the future. The  
18 relatively few requests for exclusion and objections confirm the adequacy of the  
19 settlement. Furthermore, the attorneys’ fees and costs, including costs of notice and  
20 claims administration, will be paid separate from the settlement fund, creating  
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1 additional value for the Class. For all of the foregoing reasons, Plaintiffs  
2 respectfully request this Court enter an Order granting final approval of the  
3 Settlement.

4  
5 Respectfully submitted,

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8 Dated: July 22, 2016

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